

§ 708.5

§ 708.5 What employee conduct is protected from retaliation by an employer?

If you are an employee of a contractor, you may file a complaint against your employer alleging that you have been subject to retaliation for:

(a) Disclosing to a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, your employer, or any higher tier contractor, information that you reasonably believe reveals—

(1) A substantial violation of a law, rule, or regulation;

(2) A substantial and specific danger to employees or to public health or safety; or

(3) Fraud, gross mismanagement, gross waste of funds, or abuse of authority; or

(b) Participating in a Congressional proceeding or an administrative proceeding conducted under this part; or

(c) Subject to § 708.7 of this subpart, refusing to participate in an activity, policy, or practice if you believe participation would—

(1) Constitute a violation of a federal health or safety law; or

(2) Cause you to have a reasonable fear of serious injury to yourself, other employees, or members of the public.

[57 FR 7541, Mar. 3, 1992, as amended at 65 FR 6319, Feb. 9, 2000]

§ 708.6 What constitutes “a reasonable fear of serious injury?”

Participation in an activity, policy, or practice may cause an employee to have a reasonable fear of serious injury that justifies a refusal to participate if:

(a) A reasonable person, under the circumstances that confronted the employee, would conclude there is a substantial risk of a serious accident, injury, or impairment of health or safety resulting from participation in the activity, policy, or practice; or

(b) An employee, because of the nature of his or her employment responsibilities, does not have the training or skills needed to participate safely in the activity or practice.

[57 FR 7541, Mar. 3, 1992, as amended at 65 FR 6319, Feb. 9, 2000]

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§ 708.7 What must an employee do before filing a complaint based on retaliation for refusal to participate?

You may file a complaint for retaliation for refusing to participate in an activity, policy, or practice only if:

(a) Before refusing to participate in the activity, policy, or practice, you asked your employer to correct the violation or remove the danger, and your employer refused to take such action; and

(b) By the 30th day after you refused to participate, you reported the violation or dangerous activity, policy, or practice to a DOE official, a member of Congress, another government official with responsibility for the oversight of the conduct of operations at the DOE site, your employer, or any higher tier contractor, and stated your reasons for refusing to participate.

§ 708.8 Does this part apply to pending cases?

The procedures in this part apply prospectively in any complaint proceeding pending on the effective date of this part.

§ 708.9 When is a complaint or other document considered to be “filed” under this part?

Under this part, a complaint or other document is considered “filed” on the date it is mailed or on the date it is personally delivered to the specified official or office.

Subpart B—Employee Complaint Resolution Process

§ 708.10 Where does an employee file a complaint?

(a) If you were employed by a contractor whose contract is handled by a contracting officer located in DOE Headquarters when the alleged retaliation occurred, you must file two copies of your written complaint with the EC Director.

(b) If you were employed by a contractor at a DOE field facility or site when the alleged retaliation occurred, you must file two copies of your written complaint with the Head of Field Element at the DOE field element with jurisdiction over the contract.